

Avista Corporation Testimony in Opposition to SB 420 (Jackson)

Mr. Chairman and members of the Senate Natural Resources Committee. For the record my name is Tom Ebzery from Billings. I represent Avista Corporation in strong opposition to SB 420, which is before you today. Avista owns and operates the Noxon Rapids Dam, located on the Clark Fork River near the Idaho border. This is the largest private hydro facility in Montana, with over 475 megawatts. The dam was built in the late 1950's and has been supplying its customer base in Idaho and eastern Washington, as well as firming for NorthWestern Energy Company at cost based rates which benefits Montana customers.

In addition to this hydro facility Avista owns a 15% interest in Colstrip units 3 & 4 and contributes over \$9 million in property, income, generation and transmission taxes to the state of Montana. In addition each year the company contributes over \$4 million per year for rents on lands within the Noxon project area.

Avista opposes Senate Bill HB 420 as it has opposed the sponsor's repeated efforts to introduce the same legislation first in 2005 when then Representative Jackson introduced House Bill 568. The bill was tabled as was the bill introduced in 2007, Senate Bill 377. The bill before you SB 420 varies only slightly from the tabled bill.

This bill is an attempt to ignore the "prior appropriation doctrine" which has been the law since statehood which recognizes first in time and first in right. SB 420 if enacted would interject the Attorney General into the hearing process on temporary preliminary decrees or preliminary decrees for one senior water rights class: hydroelectric power. Although the Attorney General is already involved in the adjudication process as a result of legislation passed two sessions ago, this specifically inserts the AG into the process and basically mandated to make a finding singling out private hydro owners whose "flow rate or calculated flow rate" is greater than or equal to 250 cubic feet per second and thus the claim appears to exceed the "historic beneficial use for power generation" whatever that means.

The bill is flawed and after two previous tries it is clear that this is a bill that cannot be fixed. As an example the 250 cubic feet per second

standard is purely arbitrary. In fact this number has fluctuated between 250 and 280 cubic feet per second for reasons only known to the sponsor. Second we question why hydropower is singled out instead of all power generation? Third, the bill states that the claim "appears" to exceed the historic beneficial use for "power" generation. Is this hydro power or all power generation? What is "historic beneficial use"? We can only surmise that the Attorney General must create a whole new mechanism in his office to keep track of all flows of hydro owners so that he can determine whether he must be involved in this process. Just how long must he keep these records? The Clark Fork Basin where the dams owned by Avista and PPL Montana are located is probably be the last basin to complete the adjudication process and it is unlikely that any final adjudication hearings will occur until the Reserved Water Rights Compact Commission and the Confederated Salish and Kootenai tribes reach agreement. This committee recently approved a 4 year extension. Assuming they take all four years plus a two year claims period and the Attorney General will be collecting data for 6 or 7 years for what purpose?

The Montana Attorney General did not appear during the previous two sessions and took no position on the bill.

This bill imposes standards and requirements for hydropower owners and not other water users and we hope you will join the 59th and 60th legislative bodies and saying NO to SB 420.